



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4100585/2021**

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**Held in Glasgow (by CVP) on 23 April 2021**

**Employment Judge B Beyzade**

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**Miss Beata Baran**

**Claimant  
In Person**

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**Accommodation Angels Ltd**

**Respondent  
Not present and  
Not represented**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

#### **1. The judgment of the Tribunal is that:**

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- 1.1. the claim of unlawful deduction of wages was presented outwith the time limit set down in s23(2) of the Employment Rights Act 1996. Further, that it was reasonably practicable for the claimant to have presented the claim within the relevant time limit. In these circumstances, the Tribunal does not have jurisdiction to hear the claimant's claim.

#### **REASONS**

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##### **Introduction**

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2. The claimant presented a complaint of unlawful deduction from wages (holiday pay) which the respondent denied.
3. The respondent resists this claim primarily on the basis that the claim was lodged outwith the relevant statutory time limits.

4. This hearing was listed to determine the issue of time bar. This was a hearing held by CVP video hearing pursuant to Rule 46. I was satisfied that the parties were content to proceed with a CVP hearing, that it was just and equitable in all the circumstances, and that the participants in the hearing were able to see and hear the proceedings.

5. I had before me a copy of the Tribunal file which contained a copy of the Claim Form, Response Form, ACAS Certificate, and Notice of Hearing/standard directions dated 16 March 2021. The claimant were directed by the Tribunal on 16 March 2021 to send an explanation in terms of why her claim were late and any documents by 09 April 2021, however, there was no response on the Tribunal file. The claimant explained that she sent an email in reply, but as I did not have a copy of this email and she was unable to forward the same to me, I explained that the claimant could address me on the reasons why her claim were not presented until 9 February 2021 during her evidence and submissions at today's hearing.

6. The respondent was not present and not represented. I was satisfied that the respondent was sent the Notice of Hearing and on the day of the hearing the Tribunal attempted to contact the respondent by email and telephone. As the respondent failed to attend or to contact the tribunal to advise of any issues, the hearing proceeded in the respondent's absence.

7. At the outset of the hearing the claimant were advised that the Tribunal would investigate and record the following issues as falling to be determined, the claimant being in agreement with these:

- (1) Was the Claimant's claim for unlawful deduction of wages (holiday pay) presented in time?
- (2) If the claim were not presented in time, was it reasonably practicable for the Claimant to present her claim within the 3-month time limit and if not, what further period does the Tribunal consider to be reasonable?

8. The claimant gave evidence at the hearing on her own behalf.

9. The claimant made closing submissions.

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10. The claimant was assisted by a Polish-speaking interpreter throughout the hearing.

### Findings in fact

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11. On the documents and oral evidence presented the Tribunal makes the following essential findings of fact restricted to those necessary to determine the list of issues –

15 12. The claimant commenced employment with the respondent as a cleaner on 30 July 2018 and her employment came to an end on 30 October 2020.

13. When she received her final salary, it did not include the claimant's holiday pay and the claimant was not aware that she was entitled to be paid holiday pay at the time her employment was terminated. The claimant was not aware of the law or her legal entitlement to holiday pay when her employment came to an end.

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14. On or around 26 November 2020 the claimant applied for Universal Credit and whilst making her application, she was advised at the Job Centre that she may be entitled to be paid holiday pay. She did not speak English to a sufficient standard to enable her to be able to research the position independently. The claimant did not know what to do about it and at the time there were restrictions in terms of meeting people due to the COVID-19 pandemic.

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15. The claimant spoke the Polish language fluently. A friend recommended a person who spoke Polish who may be able to help the claimant to investigate

the holiday pay matter further. This person was not a lawyer and had no legal background.

- 5 16. Although the claimant had some limited contact with this individual, he could not assist her to take any steps to progress her holiday pay claim as he was due to travel to Poland. He was not available throughout the Christmas holiday and new year period until the final week of January 2021.
- 10 17. On 24 January 2021, this person advised the claimant that she had to send a polite enquiry to her employer to see whether she could resolve the issue amicably. The claimant sent the letter on 24 January 2021 and she waited a week for a reply because the person advising her stated that she had to allow 7 days for the employer to respond before she could progress the matter further. The 7-day period expired on 31 January 2021. The claimant did not receive a reply from the respondent.
- 15 18. On 24 January 2021, the claimant was also made aware by the person advising her that she had three months less one day to present her holiday pay claim to the Tribunal. She did not present her claim immediately as she was relying on the person helping her to advise her and to take steps to progress her claim on her behalf.
- 20 19. On or around 7 February 2021 the person assisting the claimant contacted ACAS by telephone to request early conciliation to be carried out on the claimant's behalf. The claimant explained that the delay in terms of contacting ACAS occurred because she did not know what to do, her spoken English was poor, and she was relying on the person assisting her to telephone ACAS on her behalf. The claimant learned about ACAS from the person assisting her. The claimant was told she could engage in early conciliation until a date in March 2021, or she could obtain a Certificate and issue a claim immediately, and she opted for the latter.
- 25 20. The early conciliation period came to an end on 09 February 2021 and the Certificate was issued on this date. There was a delay of two days between
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the date the person assisting the claimant contacted ACAS by telephone and ACAS returning his call to progress the early conciliation.

- 5 21. The claimant lodged her Employment Tribunal claim on 09 February 2021, after she had obtained the Certificate from ACAS, albeit on the same day.

**Claimant's submissions**

- 10 22. The claimant accepted that her claim had not been lodged within the relevant time limit. Section 8.1 of the ET1 Form states "*I know claim is a little bit late.*"

- 15 23. She was asking the Tribunal to hear her claim out of time because it was not reasonably practicable for her to lodge her claim in time; she did not know she had an entitlement to holiday pay until the end of November 2020; she struggled to find someone to assist her to investigate the matter and make a claim and she required assistance as she spoke insufficient English; the person she did find to assist her was not available on a regular basis and she was relying on his advice: and she had been confused about the process which was made increasingly difficult as a result of COVID-19 restrictions and the intervening Christmas and New Year holiday periods.
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24. When she was given the option by ACAS to lodge her claim immediately, the person assisting the claimant lodged her claim straight away.

25 **Observations**

25. On the documents and oral evidence presented the Tribunal makes the following essential observations on the evidence restricted to those necessary to determine the list of issues –

- 30 26. I found the claimant to be a credible and reliable witness who gave her evidence in a clear manner. She was clearly affected by the events leading up to her termination, she found it difficult to obtain advice and assistance and she relied on the person assisting her to advise her and provide her with

assistance making her claim. There were however large gaps in the chronology of events which the claimant could not adequately explain including the steps she took to progress her claim between 26 November 2020 and 24 January 2021 and 31 January 2021 and 06 February 2021.

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**Relevant law**

27. To those facts, the Tribunal applied the law –

28. Section 13 of the Employment Rights Act 1996 (ERA) provides that an employer shall not make a deduction from a worker's wages unless this is authorised by statute, a provision in the worker's contract or by the previous written consent of the worker.

29. Section 23(2) states that the Tribunal shall not consider a complaint of deduction of wages unless it is presented within 3 months of the date of payment of the wages. Where there are a series of deductions then s23(3) states that the time limit runs from the last deduction in that series.

30. The Tribunal has discretion under s23(4) to hear a claim outwith the time limit set in ss23(2) and (3) where they consider that it was not reasonably practicable for the claim to be presented within the 3-month time limit and it was presented within a further period that the Tribunal considers to be reasonable.

31. The burden rests on the claimant to persuade a tribunal that it was 'not reasonably practicable' to bring a claim in time (*Porter v Bandridge Ltd [1978] ICR 943, CA* at 948).

32. The Tribunal will often focus on the 'practical' hurdles faced by the claimant, rather than any subjective difficulties such as a lack of knowledge of the law or an ongoing relationship with the employer. In the case of *Dedman v British Building and Engineering Appliances [1973] IRLR 379*, per Scarman LJ who

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held that practicability does not always mean "knowledge". Where a claimant states a lack of knowledge as to the time limits, Scarman LJ found that the Tribunal should ask ([1974] ICR at 64): *"What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived? Should there prove to be an acceptable explanation of his continuing ignorance of the existence of his rights, it would be inappropriate to disregard it, relying on the maxim "ignorance of the law is no excuse". The word "practicable" is there to moderate the severity of the maxim and to require an examination of the circumstances of his ignorance'."*

### Discussion and decision

33. On the basis of the findings made the Tribunal disposes of the issues identified at the outset of the hearing as follows –

34. The Tribunal finds that the claim for unlawful deduction of wages was not presented within the relevant time limit under s23 of the Employment Rights Act 1996. The claimant's employment was terminated on 30 October 2020. The primary time limit for lodging her claim would have expired on 29 January 2021. The claimant contacted ACAS to commence Early Conciliation outwith the primary time limit; the case was in Conciliation for 2 days between 7 and 9 February 2021 and so the primary time limit was not extended. The Tribunal claim was lodged on 9 February 2021, which was 11 days after the expiry of the primary time limit.

35. The Tribunal considered whether it would exercise its discretion under s23(4) ERA to hear the claim out of time. For the reasons set out below, the Tribunal considered that it would not do so.

36. The Tribunal considered that it was reasonably practicable for the claim to have been presented in time. Whilst the Tribunal has the utmost sympathy with the position in which the Claimant found herself with having little

knowledge of her legal rights and difficulties with the English language and obtaining advice and assistance from a third party, it was clear that the claimant was able to contact the respondent and ACAS and engage with the Early Conciliation process (with the assistance of the person helping her) so she could equally have engaged with the process for lodging her Claim Form within the primary time limit.

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37. Further the claimant was aware that there was a short time limit for lodging the claim in the Tribunal (she became aware of this on 24 January 2021) so there is no question of ignorance of the time limits during the totality of the primary time limit (which, in any event, does not normally provide a valid excuse for lodging a claim late).

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38. The claimant took no steps to progress her claim between the end of November 2020 and 24 January 2021. This is a rather lengthy period during which no steps appeared to have been taken. Additionally no steps were taken by the claimant to progress her claim between 31 January 2021 and 6 February 2021. There was no evidence that the claimant sought alternative advice and assistance other than from the Polish-speaking person who was assisting her.

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39. For these reasons, the Tribunal considered that it was reasonably practicable for the Claimant to have lodged her claim in time.

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40. Even if the Tribunal found that it was not reasonably practicable for the claimant to have lodged her claim within the primary time limit, the Tribunal would have decided that the further 11 days that the claimant delayed in terms of lodging her claim was not reasonable in all the circumstances.

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41. In these circumstances, the claim for unlawful deduction of wages being lodged out of time and the Tribunal not being willing to exercise its discretion to hear those claims out of time, the Tribunal does not have the jurisdiction to hear the claim.



*I confirm that this is my judgment in the case of Miss Beata Baran -v- Accommodation Angels Ltd 4100585/2021 and that I have signed the order by electronic signature.*

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Employment Judge: Beyzade Beyzade

Date of Judgment: 21 May 2021

Entered in register: 26 May 2021

10 and copied to parties